

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/12/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice N. KANNADASAN

W.A. No.721 OF 1999

Madura Coats Limited
Ambasamudram
rep. by its Group Industrial
Relations Manager ... Appellant

-Vs-

1. The Presiding Officer
Principal Labour Court
Madurai

2. S. Ramaswamy ... Respondents

Appeal under Cl.15 of the Letters Patent against the order
dated 8-3-1999 in W.P. No.7063 of 1991

!For Appellant :: Mr. Sanjay Mohan, for
M/s. Ramasubramanianm and
Associates

^For Respondents :: Mr. Viduthalai for R2

:JUDGMENT

V.S. SIRPURKAR, J.

An order passed by the learned single Judge, confirming the
order passed by the Principal Labour Court is the subject-matter of this
appeal.

2. Two applications came to be filed by the Management of
Madurai Coats Limited (in short 'the Management') against one Murugan and
Ramasamy, under the provisions of Sec.33(2)(b) of the Industrial Disputes Act
(in short 'the I.D. Act'), for approval of their action of dismissing the
said two employees. In this appeal, we are concerned only with Ramasamy. The
said approval was refused by the Labour Court.

3. The case of the Management, in short, was that a show cause notice under Sec.20(1)(d) of the Company's Standing Order, dated 27-6-1986, was served on the respondent and he was placed under suspension. A charge sheet came to be served in which, it was alleged that the workman along with one Murugan, either jointly or independently, stolen three new transformers. The cost of the three transformers being Rs.450/-.

3.1. An enquiry ensued against him and in that enquiry, the charge against him was held to be proved. He was dismissed from service, considering his past record with effect from 29-12-1986.

3.2. An application came to be filed under Sec.33(2)(b) of the I.D. Act, for seeking approval of the dismissal since there was already a dispute pending between the Union and the Management vide I.D. No.1 of 1985. The said incident of theft had come to light because one Murugan was caught while carrying the transformers and when questioned, he had implicated the present respondent Ramasamy, suggesting that it was Ramasamy who had given the transformers to him. The enquiry proceeded against both the workmen and as suggested earlier, the present respondent was found guilty along with Murugan and both were dismissed. Two approval petitions, therefore, came to be filed separately.

3.3. The Presiding Officer of the Special Industrial Tribunal, before whom the said approval applications were pending, held that the enquiry itself was not proper and prejudice was caused to the workmen on account of the defective charge.

3.4. After this, the Management took a peculiar step of holding a de novo enquiry. They revoked the dismissal order against the respondent, paid the respondent full salary from the date of suspension till the date of revoking the dismissal order and issued a fresh show cause notice on 27-6-1996 under Sec.20(1)(d). It was alleged that the workman along with Murugan jointly or independently stolen three transformers. Similar charge-sheet was served on Murugan also and ultimately a common enquiry was again held against both.

3.5. The Management examined five witnesses, including the one, who had seen Murugan carrying the parcel. He also deposed that when questioned, Murugan admitted that the three new transformers were given to him by Ramasamy, the present respondent. On the basis of the evidence of the other witnesses, the enquiry officer came to the conclusion that both Murugan as well as the present respondent were guilty of theft and they were ordered to be dismissed by the order dated 29-12-1986.

3.6. Again the approval was sought before the Labour Court under Sec.33(2)(b) of the I.D. Act, which was numbered as A.P. No.36 of 1987. It seems that Murugan was not interested and he has compromised the matter with the Management. The Labour Court again refused to grant the approval against which, the Management proceeded to file a writ petition, which was dismissed by the learned single Judge, necessitating the present appeal.

4. Shri Sanjay Mohan, learned counsel appearing on behalf of the Management, contends that the order passed by the Labour Court is completely without jurisdiction. Considering the language of Sec.33(2)(b), he points out that the jurisdiction was not an appellate jurisdiction and the only task of the court under Sec.33(2)(b) was to see whether there was a prima facie case for dismissal and in that the court could interfere with the

findings of the enquiry officer only if the findings are perverse and unsupported by evidence. He points out that the Labour Court had exceeded the jurisdiction and has almost acted as an appellate authority and recorded contrary findings to the findings given in the domestic enquiry. Learned counsel further suggests that the learned single Judge has also not appreciated this error of jurisdiction committed by the labour court and has mechanically confirmed the finding, which was also an incorrect finding of fact on merits.

5. We were taken through the order of the Labour Court in extenso and were also taken through the evidence.

6. As against this, Shri Viduthalai, learned counsel appearing on behalf of the respondent-workman, suggests that a full-fledged enquiry was completed, culminating into the order of dismissal. An approval was sought to be obtained in respect of that order of dismissal and it was refused. Learned counsel pointed out that the order of the tribunal, who refused the approval, remained unchallenged and became final and, therefore, under the circumstances, the second enquiry on the same incident, with the same witnesses, could not have been conducted and the dismissal order could not have been passed and further no such approval could be sought under Sec.33(2)(b). Learned counsel further argues that it is now a settled position in law by the decisions of the Supreme Court that such second opportunity cannot be given to the Management to hold successive enquiries and eventually to seek successive approvals. Learned counsel, however, said that even otherwise, it cannot be said that the Tribunal had in any manner exceeded its jurisdiction under Sec.33(2)(b).

7. Sec.33(2)(b) reads as under:

"33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings

(1) Not relevant

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman-

(a) not relevant

(b) for any misconduct not connected with the dispute, discharge or punish, whether by

dismissal or otherwise, that workman:

PROVIDED that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

8. Since, Shri Viduthalai, has raised an objection regarding the tenability of the second disciplinary enquiry and the consequent second application for approval under Sec.33(2)(b), it will be better to see as to whether such second application was at all possible in law. Shri Viduthalai,

very heavily relies on the two judgments of the Supreme Court, they being STATE OF ASSAM v. J.N. ROY BISWAS (AIR 1975 SC 2277); and UNION OF INDIA v. K.D. PANDEY AND ANOTHER (2003 -3- LLJ 557).

9. In the first aforementioned decision, the learned counsel relies on the observations of the Supreme Court in paragraphs 3 and 4 which suggest that it is a settled law that where a first enquiry against a Government servant is found bad on account of some technical or procedural grounds, the second enquiry cannot at all be launched. The Supreme Court suggests that the second enquiry can be launched. However, where a disciplinary case has been closed, the official reinstated on account of his full exoneration, the Government cannot re-start the exercise in the absence of a specific power to review or revise vested by the rules in some authority. Learned counsel points out that there was no such authority here and, therefore, the second enquiry could not have been held. These observations were made in respect of a Government servant and that too, in connection with Art.311 of the Constitution of India. However, the general principle therein has to be noted that there has to be a specific power in the rules to start a fresh enquiry where the first enquiry has been held to be bad.

10. The next case relied upon by Shri Viduthalai is also a case of a domestic enquiry where the Supreme Court has held that a second enquiry, on the same set of charges and material on record, was impermissible. This was a case under the labour jurisdiction where the Industrial Tribunal passed an award setting aside the order of dismissal of a workman and directed the reinstatement. The Railway board, which was the employer, challenged the award in the writ petition. However, that was dismissed. These concurrent orders were challenged. While dismissing the appeal, the Supreme Court observed in paragraph 5 as follows:

"In fact, from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter and, if that is so, we fail to understand as to how there could have been a remit to the inquiry authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the inquiry authority is in accord with that of the disciplinary authority and would be abuse of the process of law."

Learned counsel very heavily relies on this judgment to suggest that there cannot be a fresh enquiry on the same charges and on the same set of facts.

11. The third decision relied upon by the learned counsel in INDIAN TELEPHONE INDUSTRIES LIMITED AND ANOTHER v. PRABHAKAR H. MANJARE AND ANOTHER (2002 (4) CTC 748) is also of the Supreme Court wherein the question of the second application for approval came directly for consideration. It would be interesting to note the facts. The workman in this case was kept under suspension and was thereafter dismissed. The employer sought the approval of the dismissal under Sec.33(2)(b). It was held that the dismissal was invalid for non-compliance of the provisions of Sec.33(2)(b) of the Act since the wages for one month were not paid. This order remained

unchallenged. The Management treated this non-compliance to be a mere technical breach and, therefore, passed orders of dismissal for the second time without any further or fresh enquiry and without paying the wages to the respondents for the period from the first dismissal order to the date when the second dismissal order was passed. Again an application came to be moved for approval of the orders of dismissal. This time, however, the Tribunal granted the approval, relying on the Supreme Court judgment in PUNJAB BEVERAGES PRIVATE LIMITED, CHANDIGARH v. SURESH CHAND AND ANOTHER (1978 (2) SCC 144). The order of the Tribunal was upheld by the High Court. However, the Division Bench allowed the appeals and set aside the order of the learned single Judge and held that the second application of approval was not possible more particularly in view of the fact that the order refusing the first application for approval which remained unchallenged. Learned counsel invited our attention to the following observations in paragraph 9 of this judgment: "Having not challenged the earlier order dated 1-9-1987, it was not open to the petitioners to make a second application seeking approval for the order of dismissal of the respondent, that too without paying full wages. The Division Bench of the High Court has found that the second order of dismissal amounted to unfair labour practice and victimization. The Tribunal was not justified in allowing the second application seeking approval by ignoring the dismissal of the earlier application made by the management for non-compliance of the mandatory provisions of law. The Tribunal proceeded on the ground that the earlier application was not decided on merits and held that it was open to the petitioners to file a second application. This is clearly contrary to the decision of the Constitution Bench. It appears to us that the petitioners designed to defeat the claim of the respondents by making a second application when the order suffered by them on the first application had become final." The learned counsel, therefore, very forcefully argues that this decision, which was following the decision of the Constitution Bench in JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. v. RAM GOPAL SHARMA AND OTHERS (2002 (2) SCC 244) is the final word on the issue and, therefore, the second application itself could not have been made particularly because the first order, refusing the approval was suffered by the Management by not challenging the same.

12. Shri Sanjay Mohan tried to get out this situation by pressing a very novel argument. According to the learned counsel, firstly the judgment did not apply on facts and secondly, the ratio of the judgment was not as was being interpreted by the learned counsel for the respondent-workman. Learned counsel points out that it is not specifically held by the Supreme Court that a second enquiry is not possible at all. He points out that in that instant case, the first application for approval was rejected as Sec.33(2)(b) was not followed since one month's salary was not given to the employee and thereafter also, there was no second enquiry held but only a second application came to be made on the fresh order of dismissal passed after having complied with the condition of payment of one month salary. It was under those circumstances, the Supreme Court came to the conclusion that the second application was not possible. Learned counsel further argues that in this case, after the first enquiry was rejected on the technical ground of defect in the charge and the manner of enquiry, it was for the Management to hold a proper enquiry as even the same could have been proved before the Member of the Tribunal also. Learned counsel makes out as

if instead of proving the charge, or leading evidence in support of it before the Tribunal, the Management had chosen to hold an independent enquiry and that too after paying the salary for the interregnum period and after reinstating the workman and, therefore, there was nothing wrong if the second enquiry was conducted though with an amended charge and procedure. Learned counsel heavily relied on paragraph 8 where the Supreme Court had found that the earlier judgment, refusing the approval by the Tribunal, had become final and, therefore, the dismissal of the employee therein, had become void and yet

the second order came to be passed without paying the wages for the interregnum period between the first and the second order of dismissal. Learned counsel urged that such was not the case in the present situation.

13. It is no doubt true that in the present matter, the workman has been given his wages and his dismissal order also came to be withdrawn and only thereafter the fresh dismissal order has been given. However, the ratio does not appear to be permitting the second enquiry and the second application for approval where the first enquiry was rendered null and void on account of the technical defects. The Supreme Court has very categorically stated in paragraph 9 that the Tribunal had held that the earlier application was not decided on merits and, therefore, the second application was possible. The Supreme Court found that the view expressed by the Tribunal is contrary to the decision of the Constitution Bench in JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK case, cited supra. The Supreme Court, thereafter also points out that making a second application for approval, even after suffering the first order of refusal, amounted to a design to defeat the claim of the workman. We have deliberately quoted the observations of the Supreme Court in the earlier part of the judgment. Those observations would suggest that the Supreme Court did not permit the second application where the decision refusing the approval of the first application remained unchallenged. The situation is no different in our case. Here also, the first order of the Tribunal has actually remained unchallenged.

14. We have closely gone through the order of the Special Industrial Tribunal wherefrom it can be seen that the approval was not refused merely for the technical reasons of the defects in enquiry. There are specific findings in that judgment touching the merits of the matter. The Tribunal in that case first criticised holding of the separate enquiry against Murugan and Ramasamy, respondent herein. It pointed out that while the charge against Murugan that he alone had committed the theft of transformers and had attempted to remove from the factory, there was also a charge against Ramasamy similar in the nature and the charges against both the delinquents were mutually exclusive. The labour court had also found that very strangely Murugan, who was himself allegedly caught with the stolen transformers, was also used as a witness against Ramasamy while he himself was facing the charge of theft separately where he alone was alleged to be responsible for the theft. There is a specific reference made to the admission made by Murugan in his statement and the finding is in the following words:
"I need only add, that such evidence of the delinquent Murugan is the only piece of evidence to connect the delinquent Ramasamy with the incident of

theft and the attempted removal of transformers from the mill premises. I may at once point out, that in its earliest statement (Ex.M-17) the said delinquent Murugan had stated, that he had implicated delinquent Ramasamy only with a view to offer some explanation to the Sub Manager, in the event of the latter questioning him as to how he came to possess the transformers recovered from him. If the above detailed facts are given due credence, it would be clear that the action of the Management in not arraying both the delinquents in a single proceeding had very much prejudiced the defence of the delinquents and had even occasioned the framing of mutually contradictory charges against both the delinquents."

Ultimately, the learned Member gave a finding at the end of paragraph 7 that by such mishandling by the Management in initiating and prosecuting the disciplinary proceedings against the two delinquents, they had suffered a prejudice in their defence.

15. The Tribunal also found fault with a very significant fact wherein it was shown as if the order of dismissal was made on 25-1-1986 whereas, the findings of the enquiry officer were, however, dated 28-1-1986. The Tribunal also gave a finding that an attempt on the part of the Management to suggest that it was merely a mistake and in fact, the findings of the enquiry officer were actually given only on 25-1-1986 was also futile because the version of the witnesses examined was wholly unacceptable to the Tribunal thereby the Tribunal clearly held that there was an element of victimization and that even before the findings were received by the disciplinary authority, the order of dismissal, however, was ready and issued.

16. The Tribunal also scoffed at the fact that the order of the enquiry officer was not on his own but, he had also sought the approval of his finding by the law officer of the employer. Thus, the Tribunal had actually come to the conclusion that the findings of the enquiry officer were not worthy the paper on which they were written and they did not amount to an independent judgment of the enquiry officer but were the views and the opinions of the law officer of the employer. In fact, that was found as a definite design to implicate the workman somehow or the other.

17. This judgment has remained unchallenged admittedly and, therefore, it is obvious that the Management has accepted by not challenging this judgment. It cannot be said under the circumstances that the earlier approval was rejected only on technical grounds of defects in the inquiry. We find that even in the present enquiry, the same Murugan, who has compromised his dispute with the Management, was examined as a witness against the present respondent-workman on the basis of which, a fresh order of dismissal had been passed against the workman. We cannot, therefore, accept the argument of Shri Sanjay Mohan that the first enquiry was rejected on technical grounds and, therefore, the second enquiry was possible. We have not been shown any precedent wherein a second enquiry has been held permissible on the same charge, facts and materials. We could understand the situation where the Tribunal itself had permitted a further enquiry, which would be nothing but a continuation of the earlier enquiry but, such is not the case and the finding of the Tribunal that the dismissal of the workman was a foregone conclusion and the enquiry was only a design to obtain that result, was staring at the Management having remained unchallenged. On this backdrop atleast, the second

enquiry was not possible at all, nor was the application on the basis of the fresh dismissal.

18. Two more judgments were cited before us they being, STATE BANK OF INDIA v. THE ADDITIONAL COMMISSIONER FOR WORKMEN'S COMPENSATION AND ANOTHER (1975 I LLJ 159) and SMT. N. RADHA BAI v. UNION OF INDIA (1987 II LLN 305) but, they are under the Tamil Nadu Shops and Establishments Act and are not apposite to the controversy involved in the present case.

19. In that view, we are of the clear opinion that the second enquiry was not possible in this case and consequently, the second application on the same material in the facts of this case, was also not possible. It will not be, therefore, necessary for us to take stock of the argument of the learned counsel that the order of the Tribunal was beyond the jurisdiction as the Tribunal has chosen to act as an appellate court to the findings of the enquiry officer. However, in order to complete the record, we would consider even that argument.

20. Learned counsel relied on the celebrated judgment of the Supreme Court in PUNJAB NATIONAL BANK LIMITED v. ALL INDIA PUBJAB NATIONAL BANK EMPLOYEES' FEDERATION (AIR 1960 SC 160) and pointed out that in paragraphs 24 and 25 thereof, the Supreme Court has cautioned that where the enquiry was held to be proper then, the Tribunal's jurisdiction would be only to see as to whether the workman was prima facie guilty of the charge. The second condition is that it should not appear to the Tribunal that the employer was guilty of victimization or any unfair labour practice and as such the Tribunal is generally reluctant to interfere with the impugned order.

21. Learned counsel also cited before us the reported decision in MARTIN BURN LIMITED v. BANERJEE (1958 I LLJ 247) to show that in such enquiries only a prima facie view has to be taken and the Tribunal or the Labour Court, as the case may be, cannot go into the appreciation of evidence aspect.

22. We were also taken through the judgment of the Supreme Court in BHARAT IRON WORKS v. BHAGUBHAI (AIR 1976 SC 98) as also LORD KRISHNA TEXTILE MILLS v. ITS WORKMEN (1961 I LLJ 211). There can be no dispute that in such enquiries the Tribunal has to first see whether the action by way of victimization or by way of unfair labour practice; it has to secondly see as to whether the domestic enquiry is fair and proper and if it is found to be so then, the Tribunal has only to see the prima facie case and in that the Tribunal cannot act as an appellate court. However, it does not mean that the Tribunal has no jurisdiction to refer to the evidence at all. It can still refer to the evidence to see as to whether the action on the part of the Management-employer was by way of victimization or otherwise. Merely referring to the evidence of the witnesses, as has been done by the Tribunal in this case, would not by itself throw it outside the arena of jurisdiction. What has actually been done by the Tribunal in this case is only to find out as to whether there were prima facie findings and in that it cannot be said that it could not have seen the correctness of the finding, atleast prima facie.

23. We have seen the order of the Tribunal very carefully.

It is true that the evidence of Murugan has been referred to. However, it is obvious that Murugan, who himself was caught with the stolen articles has been used as a witness against Ramasamy, the present respondent, to suggest that it was Ramasamy who had stolen the articles and gave them to Murugan. It was on this backdrop that the evidence was liable to be considered as to whether this suggested a pure victimisation. This was nothing but the user of one employee against the other. We do not think, therefore, that the learned counsel is justified in dubbing the Labour Court's order as an appellate order and, hence, being without jurisdiction. In that view, we are of the clear opinion that the order of the Labour Court in refusing the approval is correct order in law as well as on facts and the confirmation of that order by the learned single Judge is also correct. The learned single Judge has found that the Labour Court had correctly held that there was no prima facie material available because Anbazagan, who was a witness, had not taken the name of the respondent-workman herein in his report dated 21-12-1985.

24. We find no force in the appeal and dismiss the same with the cost of Rs.2,000/-. Connected C.M.P. No.10225 of 2000 is closed.

Index: Yes

Website:Yes

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